BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of: **WILLIAMSON TRANSPORT CO., INC.,** **Respondent.**	**Docket No. FMCSA-2004-17247** **(Southern Service Center)**

ORDER DENYING PETITION FOR RECONSIDERATION

1. Background

On January 14, 2009, I issued a Final Order: Decision on Review (Final Order), reversing a March 15, 2006 Administrative Law Judge (ALJ) Decision that found the Federal doctrine of "substantial continuity" to be the proper test for determining motor carrier successor liability. The Final Order concluded that, based upon North Carolina law, Respondent, Williamson Transport Co., Inc. (Transport), was not the corporate successor to Williamson Produce, Inc. (Produce) and, therefore, was not liable for the violations of the Federal Motor Carrier Safety Regulations (FMCSRs) attributed to Produce by both Claimant, the Field Administrator for the Southern Service Center of the Federal Motor Carrier Safety Administration (FMCSA), and the ALJ. The Final Order found that "[a]pplication of the North Carolina law of corporate successorship would not frustrate, or conflict with, the Congressional mandate of the highest degree of safety."[1] It ruled that "[t]his is not one of the 'few and restricted' cases requiring a special [F]ederal

[1] Final Order, at 25.

rule."[2] Of the four charges at issue in this proceeding,[3] the Final Order dismissed Counts 2 and 4 because the parties and the ALJ had agreed that if a Federal rule of "substantial continuity" were not the proper test, those dismissals would ensue. The Final Order also dismissed Count 1 because Claimant did not meet his burden to show, by a preponderance of the evidence, that George D. Pope was an employee of Transport, and, on September 22, 2003, drove in commerce a commercial motor vehicle leased by Transport. Although Count 5 was found, the civil penalty was reduced from $9,560 to $2,250 based upon an additional Uniform Fine Assessment (UFA) worksheet prepared by Claimant if the "substantial continuity" test were not used.[4]

On February 9, 2009, Claimant petitioned for reconsideration of the Final Order, contending that: (a) the Final Order failed to recognize that Produce sought to purge its significant adverse safety history; (b) the Final Order disregarded evidence that Transport used Produce's name and DOT number and otherwise continued to operate as Produce, and Transport attempted to hide its true identity from the police and FMCSA; (c) the Final Order was based upon an incorrect interpretation of North Carolina law and improperly concluded that application of that State's law would fulfill the Congressional purpose of pursuing the highest degree of safety; (d) the conclusion of the Final Order that state law was controlling required remand to the ALJ for a determination of successor liability under North Carolina law; (e) the Final Order failed to follow the Agency decision in *In the Matter of Allometrics, Inc.*, Docket No. FHWA-1997-2488,

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[2] *Id.*

[3] Five counts were charged in the Notice of Claim; Count 3 was subsequently dropped. See Final Order, Note 6, at 6.

[4] The effect on the civil penalty is the same if Claimant does not prove that Transport is liable under the doctrine of "substantial continuity."

Final Order, March 10, 2003; (f) the Final Order misinterpreted Federal Circuit Court decisions; and (g) the Supreme Court did not preclude application of the "substantial continuity" doctrine under Federal common law. Claimant maintained that "[t]he reincarnation of ... Produce into ... Transport is a classic example of a recurring and extraordinary set of cases that frustrate FMCSA's ability to enforce the [FMCSRs]."[5]

On March 6, 2009, Respondent replied to the Petition for Reconsideration, arguing that there was no basis in fact or law that would justify withdrawal of the Final Order. "Claimant offers nothing compelling that warrants reversal of [the Assistant Administrator's] decision, especially since [it] conforms to the holdings reached by the majority of Federal courts deciding successor liability issues...."[6]

2. Discussion

Claimant's petition has led me to re-evaluate the proper standard for determining motor carrier successor liability. Therefore, I am revising my determination that state law is the correct standard. After carefully reviewing the record in this case again, I have decided that it is not necessary in this case to determine whether the standard for successor liability in motor carrier civil penalty enforcement cases should be the traditional common law, the particular state law, or the Federal doctrine of "substantial continuity." That is because Claimant does not succeed under any of these standards. Nevertheless, should a case come before me in which successor liability is proven by the Federal doctrine but not by state law, I will revisit the issue.

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[5] "Field Administrator's Petition for Reconsideration of the Assistant Administrator's Final Order" (Claimant's Petition), at 2.
[6] "Respondent's Reply to Field Administrator's Petition for Reconsideration of the Assistant Administrator's Final Order" (Respondent's Reply), at 18.

A. Transport was not the corporate successor to Produce under the "mere continuation" exception to the traditional common law of corporate successor liability.

The traditional common law rule of corporate successor liability, which was "designed to maximize the fluidity of corporate assets, provides that 'a corporation that merely purchases for cash the assets of another corporation does not assume the seller corporation's liabilities.'" *Upholsterers' Int'l Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323, 1326 (7th Cir. 1990). "Most jurisdictions recognize four exceptions to this rule, however, and will hold the buying corporation liable for the seller's debts if (1) the buyer expressly or impliedly agreed to assume such debts; or (2) the transaction amounts to a de facto merger of the buyer and seller; or (3) the buying corporation is a 'mere continuation' of the selling corporation; or (4) the transaction is entered into fraudulently in order to escape liability for such debts." (Emphasis supplied.) *Bud Antle, Inc. v. Eastern Foods*, 758 F. 2d 1451, 1456 (11th Cir. 1985) (internal citations omitted). For the purchaser to be a "mere continuation" of the seller, there must be "a common identity of the officers, directors, and stockholders in the selling and purchasing corporations." *Id.* at 1458, 59.

Claimant admitted that "Transport would not be a successor to Produce under the 'mere continuation' doctrine because the corporations do not share any of the same shareholders, directors or officers. Larry Maynor owns Transport and William Williamson owns Produce, and there are no common officers, directors, or shareholders between the two companies."[7] Accordingly, Claimant contended that the Federal doctrine of "substantial continuity" should be the standard; he also argued that the matter

[7] Claimant's Petition, at 12. There is no evidence that Transport and Produce ever had the same officers, directors, and shareholders.

should be remanded to the ALJ for further testimony concerning fraud if I found that state law was the proper standard.

B. Transport was not the corporate successor to Produce under the North Carolina version of "mere continuation."

North Carolina follows the traditional common law with the four exceptions. North Carolina's test for the "mere continuation" exception, however, includes factors other than a common identity of officers, directors, and stockholders. "In determining whether the purchasing corporation [in North Carolina] is a 'mere continuation' of the old corporation, factors such as inadequate consideration for the purchase, or the lack of some of the elements of a good faith purchaser for value may be considered." *L.J. Best Furniture Distribs, Inc. v. Capital Delivery Serv., Inc.*, 111 N.C. App. 405, 408, 432 S.E.2d 437, 440 (1993). Thus, in North Carolina, "a purchaser could conceivably be found to be the corporate successor of the selling corporation even though there is no continuity of ownership" because these other conditions are present. *G.P. Publ'ns, Inc. v. Quebecor Printing-St. Paul, Inc.*, 125 N.C. App. 424, 435, 481 S.E.2d 674, 680 (1997) (citing *L.J. Best*).

As a result, Claimant's argument that, under North Carolina law, "a violator who has not complied with FMCSA safety statutes and regulations can escape liability merely because the ownership of the prior corporation and successor corporation are not the same" (Reply to Petition, at 31) is incorrect. In *G.P. Publications*, the Court of Appeals of North Carolina concluded that "the trial court should have instructed the jury [not as to the elements of the "substantial continuity" test, but] only as to the elements that make up North Carolina's 'mere continuation' test: Continuity of ownership, inadequacy of

consideration, or lack of some of the elements of a good faith purchaser for value." (Emphasis supplied.) 125 N.C. App., at 439, 481 S.E.2d, at 682-83.

Claimant argued, however, that I had incorrectly characterized the requirements of North Carolina law,[8] criticizing my reliance on *G.P. Publications* for its finding that only one of three factors – continuity of ownership, inadequacy of consideration, or lack of some elements of a good faith purchaser for value – is necessary for a finding that the purchasing corporation is a "mere continuation" of the seller. Claimant contended that "North Carolina law requires some identity of shareholders, directors or officers for a finding of 'mere continuation.' The absence of this element in the instant case was significant and was a primary basis for the ALJ's ruling that state law was not adequate to fulfill the statutory mandate in furtherance of achieving the highest levels of safety."[9] Claimant cited *Budd Tire Corp. v. Pierce Tire Co.*, 90 N.C. App. 684, 687, 370 S.E.2d 267, 269 (1988);[10] *L.J. Best*, 111 N.C. App. 405, 432 S.E.2d 437; and *Morgan v. Cavalier Acquisition Corp.*, 111 N.C. App. 520, 539, 432 S.E.2d 915, 926, 335 N.C. 238, 439 S.E.2d 149 (1993) for the proposition that, "in order to find a successor liable under the mere continuation theory, the predecessor and successor companies must have 'some of the same shareholders, directors, and officers,' while inadequacy of consideration and lack of good faith purchaser for value are supplementary factors to be considered

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[8] Claimant also argued that I had improperly concluded that application of North Carolina law fulfills the Congressional purpose of the highest degree of safety. Because Claimant does not succeed under the Federal doctrine of "substantial continuity," many of Claimant's arguments, including this one, which were made with the goal of convincing me to use that standard, are not discussed.

[9] Claimant's Petition, at 9.

[10] Note that "some identity of shareholders, directors or officers," as set forth by Claimant, differs from "some of the same shareholders, directors, and officers," (*Budd Tire Corp.* at 687), which, in turn, differs from "a common identity of officers, directors and stockholders...." (*Budd Antle* at 1459).

following the finding of continuity of owners, officers or directors."[11] Claimant concluded that *G.P. Publications* was an anomaly and was inconsistent with both prior and subsequent North Carolina cases. Claimant also cited a law review article, which stated that the "North Carolina Court of Appeals muddied the water … in *G.P. Publications, Inc.*, as it outlined the test for mere continuation."[12] Claimant argued that the *G.P. Publications* court did not apply the test quoted in the decision, holding that "the purchaser was not a mere continuation because the companies did not share any common stockholders or directors and because adequate consideration was paid."[13]

Claimant's contention that *G.P. Publications* is an anomaly, that it "is inconsistent with both prior and subsequent North Carolina cases"[14] is not supported. (Emphasis supplied.) The only cases cited by Claimant were all decided prior to *G.P. Publications*. Far from being inconsistent with subsequent North Carolina cases, *G.P. Publications* continues to be cited as the law in North Carolina. *Becker v. Graber Builders, Inc.*, 149 N.C.App. 787, 791-92, 561 S.E.2d 905, 909 (2002). In fact, the Supreme Court of North Carolina denied discretionary review of the decision about which Claimant complains. *G.P. Publ'ns, Inc. v. Quebecor Printing-St. Paul, Inc.*, 346 N.C. 546, 488 S.E.2d 800 (1997). Furthermore, the ALJ cited only one case for the law in North Carolina, *G.P. Publications*. And while Professor Kuney averred that *G.P. Publications* "muddied the waters," Claimant referred to no case that cited the Kuney article.[15]

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[11] Claimant's Petition, at 10.
[12] Claimant's Petition, at 11, citing George W. Kuney, *A Taxonomy and Evaluation of Successor Liability, 6 Fla. St. U. Bus. L. Rev. 9, 126 (2006).*
[13] Claimant's Petition, at 11.
[14] Claimant's Petition, at 10-11.
[15] Claimant's contention that the legal standard for fraud in Georgia is materially different from North Carolina's fraud exception is also not supported. *See Mobley v.*

Even if Claimant were correct in his interpretations of North Carolina law, he still could have attempted to show that the transaction was a fraudulent conveyance, the fourth prong under both the traditional common law and the North Carolina law.[16] In fact, Professor Kuney contended that the *G.P. Publications* "theory of successor liability (based on lack of adequacy of consideration and a lack of some of the elements of a good faith purchaser for value) would fit neatly under the fraud exception [to the traditional approach], not the mere continuation exception."[17] That is precisely what the Final Order concluded:

> In fact, the ALJ's concern with cosmetic changes and other evasions fit well into either the fraudulent-transaction prong of the traditional approach to corporate successorship or the North Carolina version of "mere continuation," which includes inadequate consideration for the purchase or lack of some of the elements of a good faith purchaser for value. These elements, although separately listed, appear to pertain to the same issue - fraud. "Under traditional fraudulent conveyance law, the sufficiency of the consideration given for the sale also plays a large factor in determining whether the sale was fraudulent." [Citation omitted.] Moreover, it was not Respondent's burden "to prove that consideration was fair; i.e. 'absence of fraud'; it [was Claimant's] burden to establish with record evidence that the consideration given was not 'fair'." [Citation omitted.][18] (Emphasis supplied.)

Claimant, however, did not supply any record evidence concerning consideration for Transport's assets. Accordingly, Claimant's argument on fraud is hereby rejected.

Hagedorn Const. Co., 168 Ga. 385, 147 S.E. 890, 895 (1929), and *Kemos, Inc. v. Bader*, 545 F.2d. 913, 915 (5th Cir. 1977), which also list defrauding creditors as an exception to the general rule on successor liability.

[16] The fraudulent-conveyance prong is essentially the same as the two additional North Carolina factors.

[17] Kuney at 127.

[18] Final Order, at 21.

C. The case will not be remanded to the ALJ for further testimony concerning inadequate consideration or fraud.

Claimant also asked that if North Carolina law is to be applied, the matter be remanded to the ALJ so that Claimant may elicit testimony concerning inadequate consideration or fraud. Claimant contended that he was not called upon in the hearing before the ALJ to show the elements of "mere continuation" under North Carolina law. As a result, he did not elicit testimony or other evidence on the inadequate consideration paid by Transport for the purchase of Produce's assets, including good will; nor, Claimant acknowledged, did he develop evidence on the absence of a good faith purchase.[19] Claimant maintained that he "should be given an opportunity to probe these evidentiary areas" required under North Carolina law by my remanding the matter to the ALJ.[20]

Throughout this proceeding, Claimant contended that the doctrine of "substantial continuity" should be applied in this matter. Claimant had to know, however, that he was not guaranteed that his arguments would win the day. Accordingly, standard trial practice dictates that a party address other potential theories of the case in the event that its theory is not accepted. That is, in case it were found that "substantial continuity" should not be applied in this matter, Claimant should have been prepared to argue that even under North Carolina law, Transport was the successor to Produce. To do that, Claimant needed to present evidence demonstrating that there was inadequate

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[19] Claimant's Petition, at 14-15.

[20] Claimant's contention that he did not elicit testimony or other evidence on inadequate consideration because he "was not called upon to show the elements of mere continuation or fraud under North Carolina law" (Claimant's Petition, at 14), is unpersuasive. The record does not reflect that the ALJ "called upon" Claimant to submit evidence only concerning "substantial continuity." Moreover, Claimant did not contend that the ALJ precluded evidence of a fraudulent transaction.

consideration paid by Transport for Produce's assets, or the transfer of assets lacked elements of a good-faith purchase. Claimant, however, presented no evidence on these issues, apparently assuming that he would win the "substantial continuity" argument. It was Claimant's strategic decision not to provide that evidence for the record; he does not get a second chance to pursue it.

Claimant attempted to provide a rationale for not pursuing the issue of a fraudulent conveyance by stating that he had determined prior to the Notice of Claim that this was not a viable option under North Carolina law. Again, Claimant's strategic decision to eliminate an issue before the case commenced does not require or justify a new hearing. Accordingly, his request that the matter be remanded to the ALJ to hear evidence on these issues is denied.

D. Transport was not the corporate successor to Produce under the Federal doctrine of "substantial continuity."

The judicially created Federal doctrine of "substantial continuity," also referred to as "continuity of enterprises," and "substantial continuation," expands the "mere continuation" prong of the traditional rule, attaching liability to the successor company if it: (1) retains the same employees; (2) retains the same supervisory personnel; (3) retains the same production facilities in the same location; (4) continues producing the same products; (5) retains the same name; (6) maintains continuity of assets; (7) maintains continuity of general business operations; and (8) holds itself out to the public as a continuation of the previous corporation. *United States v. Carolina Transformer Co.*, 978 F.2d 832, 838 (4th Cir. 1992).

Even under the "substantial continuity" standard, Claimant would not prevail. Using this doctrine is not simply a matter of checking the boxes. Each category must be

analyzed to determine whether there is a match and, if so, whether there is a plausible reason for that match.

1. Whether Transport retained the same employees.

The only employees in the same position with both companies referred to in the record are the drivers. Mr. Larry Maynor, Respondent's President, testified that he hired "12, 15" of Produce's former drivers (Tr. 613). A different witness testified that "9 of 30 drivers … had transferred over" (Tr. 765). Claimant did not cross examine Mr. Maynor asking him to be more precise in his number of hires. Retaining only 9, 12, or even 15 out of 30 drivers does not put Transport in the category of having retained the same employees for the purposes of demonstrating that Transport was a reincarnation of Produce. In the motor carrier industry, it would be reasonable for the new company to retain at least some of the drivers who worked for the old company. Moreover, Mr. Maynor testified that the drivers that he retained were the most experienced and qualified (Tr. 614), which is a reasonable act on the part of the purchasing company. The fact that 9, 12, or even 15 out of 30 drivers were retained, especially for the reason stated, does not place Transport in this category.

2. Whether Transport retained the same supervisory personnel.

Mr. Maynor worked for Produce as a motor carrier dispatcher and a fill-in truck driver. He was not a stockholder, member of the Board of Directors, a manager, or a safety director (Tr. 592). In 2003, he became President of Respondent. Mr. William R. Williamson was the owner of Produce. Mr. Williamson is not a supervisor of Transport.

In fact, there is no evidence that Mr. Williamson has any specific role in Transport.[21] Mr. Maynor hired Ms. Debra Hooks as Transport's safety officer (Tr. 612); at Produce, she handled administrative and paper processing matters (Tr. 611). Although James Brylski served as a consultant for both Produce (Tr. 678) and Transport (Tr. 675-78), there is no evidence that he served as a supervisor with either company. Therefore, although some of the same people served in both companies, there is no evidence that they were supervisors with both companies. As a result, Claimant has not established that Respondent belongs in this category.

3. Whether Transport retained the same production facilities in the same location, and
4. Whether Transport maintains a continuity of Produce's assets.

Transport's corporate office, like that of Produce, was located at 1501 Ralston Avenue, Wilson, North Carolina (Tr. 606), and Transport's telephone number was the same as Produce's telephone number when it was doing business as Williamson Trucking Company. On the other hand, although the two companies were in the same building, they had different office space (Tr. 766). Moreover, Mr. Maynor testified that he located Transport at the same location as Produce in order to have direct and personal contact with Produce, now a farming enterprise and Transport's primary customer, ample parking for the tractors and trailers, and a maintenance and repair shop onsite (Tr. 606). Mr. Maynor also testified that he entered into a long-term lease agreement with Produce for

[21] On direct examination, Mr. Maynor testified that Mr. Williamson gave him a rundown every day of the products Produce needed; he also testified that he sometimes asks Mr. Williamson for his help and leadership. "But, you know, I make the decisions." (Tr. 607) Claimant did not cross examine Mr. Maynor on the relationship between the two men.

exclusive use of all of its tractors and trailers (Government Exhibit K), office space, tractor and trailer parking space, as well as maintenance shop service (Tr. 603-04).

Claimant did not cross examine Mr. Maynor on the lease agreement[22] or call Mr. Williamson as a witness. Therefore, the record does not reflect anything other than Mr. Maynor's testimony that entering into the lease agreement was a good business decision by Transport. While the location of the companies and Mr. Maynor's interaction with Mr. Williamson concerning maintenance of the vehicles (Tr. 606-07) may raise eyebrows, Claimant did not delve into these issues on cross examination. Without evidence in the record concerning the payment terms of the lease agreement, the fact that the same production facilities were located at the same address with the same assets cannot lead me to conclude, under these circumstances, that these companies were essentially the same.

5. Whether Respondent continued producing the same products as Produce, and
6. Whether there existed a continuity of general business operations.

Although Produce was Respondent's primary client (Tr. 599), Transport provided trucking services to other companies as well, inasmuch as the produce business is seasonal (Tr. 605). Claimant did not inquire whether Produce had provided trucking services to the same companies. Nor did he ask what percentage of Transport's work was shipping Produce's goods. As a result, there is not enough information in the record to determine whether Transport provided the same services to the same companies as Produce, even if the general business operations may have continued.

[22] On cross examination, Claimant asked Mr. Maynor whether he had entered into any lease agreements when he formed Transport and, following an affirmative answer, what kind of lease agreement he had entered into. There was no follow-up questioning concerning the details of the lease agreement (Tr. 652-53).

7. Whether Transport retained the same name as Produce, and
8. Whether Transport held itself out to the public as Produce.

The name "Williamson" is part of the name of both companies. Mr. Maynor testified that he chose the name "Williamson" because of business name recognition. He testified that it is a well-respected name in the community because Mr. Williamson had provided area residents with jobs. Although customers referred to both companies as "Williamson," the name on Transport's letterhead and checks was Williamson Transport, Inc., not just Williamson (Tr. 608-09). Therefore, Mr. Maynor testified, the company held itself out to the business community as Transport (Tr. 609).

Mr. Maynor further testified that he learned after the triple-fatality crash that the name "Williamson Produce, Inc.," not Transport's name, was affixed to the tractor (Tr. 610; Government Exhibits B and C).[23] Mr. Maynor informed the Virginia State Police that, at the time of the accident, Transport, not Produce doing business as Williamson Trucking, performed the transportation (Tr. 610-11). He stated that they were changing the decals on the trucks, but missed the one involved in the accident (Tr. 610). On the other hand, Claimant maintained that between June and September of 2003, Transport incurred 24 violations of marking its predecessor's name and DOT number on its trucks. Moreover, FMCSA's safety investigator, Dennis Melsopp, testified that of the approximately dozen vehicles that he saw when he conducted his compliance review of Transport, "probably 40% had Williamson Produce, perhaps another 40% with Williamson Transport, and a remaining 20% with just a Williamson Trucking marking" (Tr. 318). That would suggest that Mr. Maynor missed more than one vehicle. It also

[23] The photographs in Government Exhibits B and C show the name on the truck to be Williamson Trucking, Inc., not Williamson Produce, Inc. Either way, the name was not Williamson Transport Co., Inc.

could suggest, however, that Transport was not attempting to pass itself off as Produce since it clearly did not list all of its trucks as Produce. Yet, Claimant never cross examined Mr. Maynor about the apparent discrepancy in his testimony or to ask him why he had not changed the markings on all his trucks.

Claimant cited Government Exhibits F[24] and FF as support for his argument that Transport continued to operate as Produce, "incur[ring] 24 violations in vehicles marked with its predecessor's name and DOT number."[25] Exhibit FF, pages 16 through 20, shows a MCMIS carrier profile for Produce from June 5, 2003 through September 24, 2003. Listed on the carrier profile is the name "Williamson Produce Inc. Doing Business As Williamson Trucking Company" and the DOT number "90896." This is the same DOT number that Produce surrendered on May 14, 2003 (Government Exhibit G), and it suggests that Transport had held itself out as Produce for nearly four months after Transport started in business, contradicting Mr. Maynor's statement that he missed only the one truck involved in the accident. Claimant, however, not only failed to charge Transport with any of the marking violations, but he also failed to cross examine Mr. Maynor about them. Therefore, there is no evidence in the record that Transport incurred 24 marking violations in vehicles marked with its predecessor's name and DOT number.

Even though Claimant submitted evidence Transport held itself out to the public as Produce by not removing Produce's name and DOT number on all of its vehicles, it is not enough for a finding of successor liability under the "substantial continuity" standard. According to Claimant's witness, Transport did remove Produce's name and DOT

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[24] There was no Government Exhibit F in the record, either in the hard copy exhibits or in the exhibits contained in http://www.regulations.gov.
[25] Claimant's Petition, at 6.

number from approximately 40 percent of the vehicles. Moreover, although Claimant also established that Transport hired some of Produce's drivers, Transport hired the ones it considered to be the best. Claimant has not shown that the supervisory personnel were the same. Nor has Claimant shown that Transport's leasing of Produce's vehicles, parking space, and maintenance service was anything more than a good business deal for both companies.

Having failed to demonstrate that Transport was the corporate successor to Produce under either North Carolina law or the Federal doctrine of "substantial continuity,"[26] Claimant's request for reconsideration is denied. The civil penalty set forth in the Final Order is the civil penalty to be paid by Respondent in accordance with that Order's instructions.

It Is So Ordered.

Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

7.20.10
Date

[26] Claimant's argument that I should have followed the Agency's decision in *Allometrics* does not help his cause. Although the Agency's 2003 decision found that there was "substantial continuity" between the then-current Allometrics, a Texas corporation, and the predecessor Allometrics, a Louisiana corporation, the decision applied the Louisiana law, not the judicially created Federal doctrine, of "substantial continuity." Moreover, because both corporations had the same President, the Texas Allometrics would also have been found to have been the successor to the Louisiana Allometrics under the "mere continuation" standard. That is the opposite of this case, given that Claimant has not shown Transport to have been Produce's successor under either standard.

CERTIFICATE OF SERVICE

This is to certify that on this 21 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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Jennie Miller